CF0000057818

50000-1-79

Cr A- 263 190 (2)

# APPEAL OF PRISONER

Division Bench (Criminal)

No. 24/44 Name जानसाय उर्फ सोन साय उर्फ नान्हू

Father's name रूपसाय

Residence ग्रा०कटरा पो०पेन्ड्रा पा०मरवाही / Age 37 वर्ष

तह० पेन्ड्रा जि० बिलासपुर

Sentenced to आजन्म कारावास on 10 जनवरी 1990

Under section 302 भा०द०वि० by IV अति० सत्र न्यायाधीश, बिलासपुर (म०प्र०)

सत्र प्रकरण क्रमांक-263/1989

it is explained to the prisoner that if he states he wishes to be represented be a legal practitioner the Appelate Court will not proceed with the base for seven days unless the legal practitioner appears either. If the legal practitioner does not appear with in seven days he may not be heard at all If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once wish the case and wil not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement निर्णय दिनांक को बन्दी स्वयं के हस्ते प्राप्त

2 Date of which copy received 10 जनवरी 1990

3 Date on which Appeal sent 16.1.90

4 Whether the prisoner wishes to be represented or not yes/~~No.~~

No. 24/44 Name [redacted]

Continued in जिला Jail म०प्र० बिलासपुर (म०प्र०)

No. 213/सो०/90/बिलासपुर dated 16.1.90 1990

Forwarded to the ~~Deputy Commissioner~~ C.J.M. Bilaspur (M.P.)

to gather which a copy of judgement or order passed in the case for favour of trensemission to the proper Appellate Court,

Superintendent Jail

High Court of Madhya Pradesh
JABALPUR.
Received
22 JAN 1990
Registration No. 193
Receipt Clerk
High Court, Jabalpur.

Date of receipt in Deputy Commissioner's Office
Date of receipt of record to accompany Memo of Appeal of the Appellate Court

No. C/CJM/90 dated 22-1-90 197

Forwarded to the Officer in charge, Record Rooms, Bd. for information & necessary action Deputy Commissioner

Date of receipt in Appeliate Court

मुख्य न्यायिक दण्डाधिकारी
बिलासपुर (म०प्र०)
P.T.O.

15/1/91

Forwarded to [illegible]
d/s 6 new [illegible]

Encl 5+263/S
in Quarter

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(14)

**आदेश पत्रक**

**मामला क्रमांक** Cr.A.No. 263 सन् 90 200

..... विरुद्ध .....

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
|---|---|---|

D.B.: HON'BLE SHRI L.C. BHADOO &
HON'BLE SHRI DILIP RAO SAHEB DESHMUKH, JJ.

23-6-2005

Shri Ranbir Singh, counsel for the appellant.

Shri Ashish Shukla, Public Prosecutor for the State/ respondent.

The accused/appellant has preferred this appeal through Superintendent, Central Jail, Bilaspur, being aggrieved by the judgment of conviction and sentence dated 10th January 1990 passed by the 4th Additional Sessions Judge, Bilaspur, in S.T. No.263/1987 whereby learned 4th Additional Sessions Judge after holding the accused/appellant guilty for committing murder of his wife under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life.

In brief, the case of the prosecution relevant for the disposal of this appeal is that on 29-7-1987 the accused along with his wife namely Pakli Bai @ Jaklu Bai were going to Katra to her parents' place. As they consumed excessive liquor, therefore, they stayed at Thihaithola. Ramkali Bai, daughter of the accused, aged about 10 years was also accompanying them, therefore, she went to the maternal uncle's place and informed

(15)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

## आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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about the excessive drinking by her father. In the morning of 30th July 87 Dokari, son of Chotu, brother of the deceased came to village Thihaithola at the residence of Chaituram. When he was taking the accused and the deceased to his house, some dispute arose between the accused and his wife, at that time the deceased was heavily drunk and she started abusing and quarrelling with the accused. On that the accused assaulted her with a Tangia, as a result of which she died. The report of the incident was lodged at the police station Marwahi Ex.-P/1. On the basis of that the case was registered and PW-6 S.S. Bhagat started investigation. The body of the deceased was sent for postmortem examination to the Pendra Hospital under Ex.-P/2. Thereafter, the clothes and the axe which were seized from the accused were sent to the doctor for examination. The Investigating Officer took into possession the blood stained soil and plain soil from the scene of occurrence under Ex.-P/7.

After investigation, charge sheet was filed against the accused/appellant. The charge was framed against the accused/appellant and he denied the charge. After recording the prosecution evidence, statement of the accused and hearing the arguments, learned trial Court convicted the

(लिखिये)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

**आदेश पत्रक**

**मामला क्रमांक ..... सन् 200**

..... विरुद्ध .....

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित —9— | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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accused/appellant for the commission of the offence under Section 302 of the I.P.C. and sentenced him to undergo imprisonment for life.

We have heard Shri Ranbir Singh, learned counsel for the appellant and Shri Ashish Shukla, Public Prosecutor for the State/respondent.

Shri Ashish Shukla informed that the accused/appellant has been released on completion of the sentence. However, Shri Ranbir Singh submits that he wants to argue this appeal on merit.

Shri Singh submits that he is not disputing the nature of death of the deceased being homicidal. He also submits that he is not disputing the involvement of the accused in crime. As PW-1 Dokari is an eyewitness and in view of this evidence, it stands proved that Pakli Bai died on account of the attack by the accused/appellant with a Tangia. He submits that medical evidence also corroborates that evidence. He also submits that on the facts and in the circumstances of the case offence under Section 302 of the I.P.C. was not made out for the reason that it has come on record that Pakli Bai was heavily drunk and she started abusing and quarrelling with the accused which enraged

(नीचे देखिये)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

**आदेश पत्रक**

**मामला क्रमांक ..... सन् 200**

..... विरुद्ध .....

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित -5- | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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the accused and without any pre-plan or pre-meditation, all of a sudden, he assaulted the deceased with a Tangia, as a result of which she died. Therefore, he submits that offence does not travel beyond Section 304-II of the I.P.C.

On the other hand, Shri Ashish Shukla supported the judgment of the trial Court.

We have perused the evidence of PW-1 who is the eyewitness to the incident. In para-7 of the evidence he has categorically stated that some quarrel took place between the accused and the deceased and deceased started abusing. It has come in para-8 of the evidence of this witness that the accused/appellant and the deceased were in drunken condition and in that process, the accused attacked his wife with a Tangia. Therefore, on these facts, we are of the opinion that there is no evidence on record that the accused/appellant assaulted the deceased with an intention to commit murder of the deceased. However, when Pakli Bai started quarrelling and abusing the accused/appellant, as both were heavily drunk, therefore, all of a sudden, the accused/appellant without having an intention to commit murder and without any pre-meditation or plan, being enraged by the act of the deceased, assaulted her with a Tangia

(पे देखिये)

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(18)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

## आदेश पत्रक

**मामला क्रमांक ..... सन् 200**

..... विरुद्ध .....

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित —S— | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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and she died. Therefore, we are of the considered opinion that offence under Section 302 of the I.P.C. was not made out. The act of the accused comes under the exception-IV of Section 300 of the I.P.C. which falls under the category of culpable homicide not amounting to murder, therefore, offence against the accused/appellant under Section 304-II was made out.

In the result, the appeal is partly allowed, while acquitting the accused from the charge of Section 302 of the I.P.C.. Instead thereof, he is convicted for the commission of the offence under Section 304-II of the I.P.C. and sentenced to undergo imprisonment for 10 years, as has been mentioned that the accused/appellant has already been released.

Sd/-
L.C. BHADOO
Judge

Sd/-
Dilip Raosaheb Deshmukh
Judge

Barve

(पीछे देखिये)